

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 6566 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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VALIBEN. WD/O KESHAVAL PURSHOTTAM - Petitioner(s)
Versus
COLLECTOR & 1 - Respondent(s)

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Appearance :

MR DHAVAL D VYAS for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6
GOVERNMENT PLEADER for Respondent(s) : 1,
MR RN SHAH for Respondent(s) : 2,
None for Respondent(s) : 2.2.1, 2.2.2

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 13/03/2007

ORAL JUDGMENT

1. Draft Amendment granted.

2. Leave to join State of Gujarat through the Principal Secretary, Revenue Department (Appeals) as party respondent.
3. Rule. Mr. Chhaya appears for respondent No.1 as well as newly added party, i.e. State of Gujarat and waives notice of rule and Mr. Shah appearing by caveat waives notice of Rule for respondent No.2 in capacity as Power of Attorney holder of respondent Nos. 2/1 & 2/2.
4. With the consent of the learned advocates appearing for both the sides, the matter is finally heard today.
5. The short facts of the case appears to be that the land bearing Survey No.658/3 at village Adajan Tal. Choryasi, Dist. Surat was held by one Jahangirji as well Manekbai Jahangirji.
6. As per the petitioners, deceased Manekbai Jahangirji had executed the Will in favour of Keshavlal Purshottam Patel and therefore, Entry No.4857 dated 29.07.1985 was mutated in the revenue record for transferring of the property pursuant to the Will in favour of Keshavlal Purshottam Patel. As per the petitioners, thereafter, there were proceedings under ULC Act as well as the proceedings under Section 84(C) of the Bombay Tenancy & Agricultural Lands Act, where there was reference to the Will and based

on the Will, the orders were also passed. As per the petitioners, permission came to be granted on 03.06.1991 by Surat Municipal Corporation for construction over the said land and as per the petitioners, the private respondents did not object at the relevant point of time. It appears that in connection with the said entry dated 4857, the proceedings came to be initiated for exercise of the revisional jurisdiction by the Collector in the year 1996 and thereafter, the District Collector vide order dated 27.07.1996, cancelled the Entry No. 4857 dated 29.07.1985. The petitioners herein carried the matter in revision being Revision Application No. 64 of 1997 and the State Government passed the order on 30.05.2005/05.01.2007, whereby the private respondents were permitted to be joined as party in the said revisional proceedings and ultimately after hearing both the sides, on 05.01.2007, the State Government passed an order, whereby the revision is dismissed and the order of the Collector is confirmed. It is under these circumstances, the present petition.

7.I have heard Mr.Vyas, learned counsel appearing for the petitioners, Mr. Chhaya, learned AGP for the State Authorities and Mr. R.N. Shah for the private respondents.

8.Upon hearing the learned advocates appearing for

both the sides, it appears that when the whole property bearing Survey No. 658/3 was held by Jahangirji as well as Manekbai Jahangirji jointly, even if the aspects of Will is kept aside(which will be separately dealt with as per the reasons stated hereinafter) under the Will of Manekbai Jahangirji, she could not transfer the share which was owned by Jahangirji in the property bearing Survey No. 658/3. Therefore, Entry No. 4857 for transferring of the whole of the property in favour of Keshavlal Purshottam Patel on the basis of so-called Will cannot be maintained.

9. Mr. Vyas, learned counsel appearing for the petitioners is not in a position to satisfy the Court otherwise that if the Will was executed by Manekbai, at the most, such Will could be effected qua the share of Manekbai and it could not be effected qua the share of Jahangirji since no Will came to be executed by Jahangirji. Therefore, I find that if the property was jointly held by Jahangirji & Manekbai and if the Will was executed by Manekbai, such a Will could be made as a basis for mutation to the extent of the share of Manekbai only and it would not operate or the entry could not have been mutated qua the share of Jahangir. Therefore, the Entry No.4857 to the extent of share of Jahangir could not be mutated in the revenue record and even if the Will, subject to the observations made

hereinafter was to be acted upon, the Entry could be maintained to the extent of share of Manekbai in favour of Keshavlal Purshottam Patel who was beneficiary of the Will or in whose favour the property was bequeathed by Manekbai.

10.Mr. Shah, learned counsel appearing for the private respondents as well as Mr. Chhaya, learned AGP have contended that no Will is in existence nor the record based on the Will or pertaining to the Will is in existence and such is the finding of the State Government while exercising the revisional power and therefore, it has been submitted that if the Will is not in existence, the Entry could not be mutated even qua the share of Manekbai. Therefore, the State Government has rightly exercised the power in cancelling the Entry in toto.

11.Whereas, Mr. Vyas, learned counsel appearing for the petitioners contended that the Entry came to be mutated as back as in the year 1985 and Keshavlal Purshottam Patel is no more and has expired long back. It is true that the Will could not be traced by the petitioners and could not be produced. But, he submitted that if the Entry was mutated long back and coupled with the circumstance that in the subsequent proceedings, the Authorities have acted upon such a Will and that the petitioners have continued with the possession including that of the construction

permission, the Entry could not have been cancelled by the Revenue Authority in any case qua the share of Manekbai based on the Will and therefore, he submitted that the exercise of the revisional power by the Revenue Authority for cancellation of the Entry to that extent cannot be maintained.

12. It prima facie appears that as recorded in the Entry, that at the time of certification the Will is verified. However, it is also a fact that the petitioners have not been able to produce the copy of the Will and further, the record pertaining to the Entries in question is also not traceable. Therefore, at this stage, it may not be possible for this Court to undertake the judicial scrutiny on the aspects of the existence of Will, its genuineness or the exercise of the power by the first authority while mutating the entry. However, it also appears that inspite of the Entry has remained in revenue record for a long time of more than 11 years, no actions were taken by the private respondents or by the Revenue Authority. Mr. Vyas is right in submitting that inspite of the possession of the property with Keshavlal Purshottam Patel and the legal heirs thereafter, and inspite of proceedings under ULC Act and under the Bombay Tenancy and Agricultural Lands Act, and the construction permission came to be granted by the Corporation, no actions were

taken by the private respondents or by the revenue authority at the relevant point of time on the basis that no Will is in existence or the Will is not genuine, etc. Therefore, if the revenue entry has continued in the revenue record for a period of about 11 years, and if the person aggrieved by the Will, has not taken action within some reasonable time, it would not be a case for upsetting the Entry, but normally, the revenue authority would relegate the parties to approach before the Civil Court for asserting their right in the property. The reason obvious is that, by now it is well settled that the revenue entries are having value only for fiscal purpose. They neither confer title in the property nor does it alter the right in the property, if otherwise in existence, as per the Transfer of Properties Act, or any other relevant law. Therefore, if the private respondents are asserting the right in the property held by the deceased Manekbai, it would be before such private respondent to approach before the Civil Court by preferring the Civil Suit. In the Civil Court, even if such a suit is filed, it will be for the private respondent to establish their rights in the property and so will be the case for the deceased Keshavlal Purshottam Patel or his legal heirs if they have to establish their rights in the property which was held by deceased Manekbai. At that stage, the respective parties

will have to discharge their burden for asserting and establishing the right in the property and after all such questions are elaborately examined and decided, proper declaration can be made by the Civil Court qua the rights of the respective parties in the property and also consequential relief, if the possession is found to be illegal or unauthorised or there is any right to receive the possession by the respective parties. All such questions cannot be examined by the revenue authority while testing the legality and validity of the revenue entry. Therefore, I find that considering the facts and circumstances, qua the share of the property held by Manekbai, if the private respondents are asserting the right in the property, it would be for them to approach before the Civil Court by filing appropriate proceedings before the competent forum. It is hardly required to be stated that if such a Civil Suit is filed, the Civil Court is to examine the matter independently on the basis of the material available before it and the observations made by any of the authority in the Entry proceedings could not be read as conclusive qua the rights of the parties in the property.

13. In view of the above, it appears that the Collector as well as the State Government while exercising the revisional jurisdiction, has not

property considered the above referred aspects, which goes to the root of the matter and therefore, the error apparent on the face of the record to that extent is committed and hence, the order passed by the Collector and its confirmation thereof by the State Government deserves to be appropriately modified.

14. In view of the above observations and discussion, the order passed by the District Collector and its confirmation thereof by the State Government, which are impugned in this petition are quashed and set aside to the extent that the Entry No. 4857 dated 29.07.1985 shall continue to remain in revenue record for property bearing No.658/3 qua the share of Manekbai Jahangir only and it would not be treated as for transfer of the property or the share held by the deceased Jahangirji pursuant to the so called Will dated 28.11.1980. It is further observed and directed that the Entry would continue qua the share of deceased Manekbai Jahangirji, but such entry shall be without prejudice to the rights of the private respondents to prefer Civil Suit before the appropriate Civil Court for asserting and establishing their rights in the property on the grounds as may be available in law, including that the Will is not in existence or that the property could not be legally bequeathed by deceased Manekbai Jahangirji. If such a Suit is

filed, the petitioners shall also be at liberty to raise all defence which may be available in law and the Civil Court shall decide the matter independently on basis of the evidence which may be available before it without being in any manner influenced by the observations made by the revenue authority in the entry proceedings.

15. Petition is partly allowed to the aforesaid extent. Rule made absolute accordingly with no order as to costs.

(JAYANT PATEL, J.)

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